IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO (Ord.) 72 of 2000.

Date of decision: 7.11.2007.

Inderjit Kalra ….**Appellant.**

Versus

New India Assurance Co. ….**Respondent.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the appellant	**Mr. Bhupinder Gupta, Sr. Advocate, with Mr. Neeraj Gupta, Advocate.**
For the Respondents:	**Mr. B.M.Chauhan, Advocate.**

Dev Darshan Sud, J. (Oral).

This is the claimant's appeal against the judgment of the learned District Judge dismissing his appeal under Sections 30 and 33 of the Arbitration Act, 1940 (hereafter referred to as 'the Act') against the award passed by the arbitrator disallowing the claim of the appellant- claimant to the extent of Rs.2,20,123/-.

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

Brief facts which may be noticed are that the dispute between the parties was referred to arbitration under the Act. The arbitrator rejected the claim of the appellant holding therein that it had not been substantiated on record and that the claim was barred by limitation.

The case set up by the appellant – claimant was that his entire shop and stocks had been destroyed in a devastating fire on 12.4.1990. His account books, stock registers and entire record perished in the fire which also destroyed his stocks and stores etc. Initially, the respondent considered the claim of the petitioner by appointing one Govil and Associates as the assessors and paid a sum of Rs.5,71,690/- being 80% of the claim amount as assessed by this Surveyor due to the claimant. Later on, the respondent offered only a sum of Rs.23,575/- purporting to be a full and final settlement of the payment of the amount due which was not accepted by the claimant. The award was challenged before the learned District Judge who, by his judgment and order dated 1.9.1999, dismissed the objections preferred by the appellant under Sections 30 and 33 of the Act holding that the Court cannot sit in judgment over

the award and cannot substitute its own findings in appeal and that the interference if any can be only if there is a jurisdictional error. It was further held that the claim of the petitioner appellant was barred by time.

Learned counsel appearing for the parties have submitted on the merits of their respective cases. It is by now well settled that the appellate Court cannot reappreciate evidence in arbitration proceedings. However, at the same time, the general proposition relied upon by the learned District Judge cannot be used to shut out the claim of the appellant. Learned counsel for the appellant submits that the learned District Judge has misdirected himself both on the questions of fact and law. He has drawn my attention to a decision of the Hon'ble Supreme Court in Sikkim Subba Associates v. State of Sikkim (2001) 5 SCC 629 holding:

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> **"it would be difficult for the courts to either exhaustively define the word "misconduct" or likewise enumerate the line of cases in which alone interference either could or could not be made. Courts of law have a duty and**

> **obligation in order to maintain purity of standards and preserve full faith and credit as well as to inspire confidence in alternate dispute redressal method of arbitration, when on the face of the award it is shown to be based upon a proposition of law which is unsound or findings recorded which are absurd or so unreasonable and irrational that no reasonable or right-thinking person or authority could have reasonably come to such a conclusion on the basis of the materials on record or the governing position of law to interfere."**

He also relied upon another decision in Union of India v. Jain Associates (1994) 4 SCC 665, approved in *Sikkim Subba Associates case* (supra) holding that word 'misconduct' in Section 30(a) does not necessarily comprehend or include misconduct of fraudulent or improper conduct or moral lapse, but comprehends and includes actions on the part of the arbitrator, which on the face of the award, are opposed to all rationale and reasonable principles etc. showing non application of mind to the material facts placed before the arbitrator. He also submits

that non application of mind by the arbitrator is a ground for interference in appeal.

Learned counsel appearing for the respondent, on the other hand, has argued that the judgment of the learned District Judge is in consonance with law and the well settled principles that there can be no reappreciation of evidence.

Without going into the merits of the case, I find that the proposition of law which has been followed by learned District Judge cannot be sustained. He was not correct in holding that it is only in the case of jurisdictional error that the Court can interfere. As held by the Supreme Court in *Sikkim Subba Associates case,* it is not possible to exhaustively define the ground on which an award can be set aside. Learned counsel for the petitioner pointed out that the arbitrator as also the appellate Court have not at all considered the fact and effect of the report of the Surveyor who had been appointed by the respondent Insurance Company, quantifying the claim to which the appellant is entitled to. He submits that the document having come from the custody of the Insurance Company had to be accepted on its face value as claimant had no control over

this report and the situation in which he found himself namely without any books of accounts etc., the assessment made should and ought to have been accepted by the Insurance Company, more especially when the assessment was made independently or under the directions of the Insurance Company. He also submitted that the question regarding the claim being barred by time has not been dealt with in accordance with law and that holding that the claim was barred by time, was not substantiated from the documents on record which did not require reappraisal, but only a conclusion of what had been contained therein.

Without going into the merits of the individual submissions made by the claimant or the respondent, the appeal is allowed. The judgment of the learned appellate Court is quashed and set aside. The matter is remanded to the learned District Judge for decision afresh in accordance with law. Needless to observe that he will not only keep in mind the limitations imposed by Sections 30 and 33 of the Act, but at the same time will not abdicate his jurisdiction on those points and issues to which the law entitles the appellate Court to adjudicate. A direction is issued to the District Judge to

adjudicate the matter afresh in accordance with law. Records of the case be sent back immediately. Learned District Judge will issue notice to the parties for appearance and shall make every endeavour to dispose of the case within a period of six months from the date on which the parties first put in appearance before him.

November 7, 2007(PC). (Dev Darshan Sud), J.